BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2003-2-E - ORDER NO. 2003-387

JUNE 9, 2003

IN RE: Annual Review of Base Rates for Fuel Cost of South Carolina Electric & Gas Company.	)	ORDER DENYING AND DISMISSING PETITIONS FOR REHEARING AND/OR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Petitions filed in this Docket. First, South Carolina Electric & Gas Company (SCE&G or the Company) filed a Petition for Rehearing and Reconsideration of Order No. 2003-295. Second, the Consumer Advocate for the State of South Carolina (the Consumer Advocate) filed a Petition for Reconsideration of Order No. 2003-295. SCE&G also filed a Response to the Consumer Advocate's Petition for Reconsideration. Because of the reasoning as stated below, both Petitions are denied and dismissed.

THE SCE&G PETITION

First, SCE&G's Petition for Rehearing and Reconsideration alleges, among other things, that Order No. 2003-295 departs from the methodology approved in Order No. 2002-347 in Docket No. 2002-2-E by not applying the established avoided fuel cost proxy to determine the costs the Company should be allowed to recover when buying purchased power. Order No. 2002-347 approved an avoidable fuel cost proxy methodology as reasonable and appropriate. Further, SCE&G noted that this Commission

has consistently affirmed the avoided cost proxy since 1996. In Order No. 2003-295 at 8, however, this Commission noted that this avoided cost proxy is on appeal to the Courts of this State, and that there is a disagreement between the Company and the Consumer Advocate as to whether S.C. Code Ann. Section 58-27-865 allows an electric utility to recover as a fuel cost through the electric utility's fuel cost factor the electric utility's entire purchased power costs incurred during the period under review, provided such purchased power costs are less than the fuel costs the electric utility avoids by making such purchase, or whether the utility may only recover the fuel costs or estimated fuel costs associated with such purchases. This Commission does not contest the recovery of prudently incurred purchased power costs, however the issue here is whether all these purchased power costs should be recovered through the fuel cost adjustment or through base rates. We also noted that the Staff and Company disagree on whether fuel costs shown on interchange purchase power invoices should be used to ascertain actual fuel costs. We found in Order No. 2003-295 at 9 that the Court's guidance on these issues would be useful on the proper application of the law in this case. We would note that these disagreements are of relatively recent origin, having begun in 2002, thus our request for Court guidance in Order No. 2003-295. We see no reason to modify our position at this point about seeking the Court's guidance. We believe that the Court can interpret the proper meaning of the term "fuel costs related to purchased power," as found in S.C. Code Ann. Section 58-27-865 (A)(Supp. 2002). This ruling is consistent with Stipulations adopted by us for fuel proceedings for two other investor-owned electric companies this year and memorialized in Order Nos. 2003-186 and 2003-351 in Docket

Nos. 2003-1-E and 2003-3-E, respectively. Thus, this allegation of error by the Company is without merit.

Second, SCE&G states that Order No. 2003-295 failed to find and conclude that wheeling costs should be recovered under the definition of "fuel costs related to purchased power." We noted in Order No. 2003-295 at 3 that Staff had disallowed wheeling charges which were booked into a transmission account, however, once again as noted above, this Commission declined to rule on purchase power issues, deferring, instead, to the Courts for guidance on a definition of "fuel costs related to purchased power." Order No. 2003-295 at 8-9. Accordingly, we reaffirm our position taken in that Order, and state that SCE&G's position is without merit.

Third, the Company alleges that, by deferring action on the first and second issues as stated above, pending further judicial explanation of the relevant statutes, this Commission has failed to provide critical direction to the Company in this interim period. In addition, SCE&G submits that the Commission is required by the statutory system which governs this proceeding to issue an order disposing of all issues necessary to decide this case, and cannot await the outcome of appeals in earlier cases. The Company notes that this proceeding is governed by S.C. Code Ann. Section 58-27-865, which provides that the Commission "...*shall* direct each company to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the Commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceeding twelve-month period" (emphasis added). SCE&G states that the Legislature's use of the word "shall" means that the duty placed

on the Commission is mandatory, and that the Commission is not given the discretion to defer its decision to a later time, while awaiting the outcome of other proceedings.

First, as has been noted above, this Commission's decision to defer to the Courts on this matter is consistent with certain Stipulations adopted by us in Order Nos. 2003-186 and 2003-351 in Docket Nos. 2003-1-E and 2003-3-E, respectively. In the two electric fuel cases memorialized by those Orders, Progress Energy and Duke Energy, respectively, both entered into agreements with the Consumer Advocate to ask the Commission to do exactly what we have done in this Docket, i.e. defer to the Courts on the issue of how to define "fuel costs related to purchased power." We adopted the Stipulation in both of those cases, because we believed that the parties' proposal for Court resolution of this complex question was reasonable and appropriate. Because this question has ramifications for the fuel proceedings for all three of the large investor-owned electric utilities, we believe that our resolution of this matter in the SCE&G fuel proceeding in a manner similar to our resolution of the matter in our other fuel proceedings was proper and logical.

Next, despite the allegations of SCE&G, this Commission has complied with the mandatory provisions of S.C. Code Ann. Section 58-27-865. This Commission has directed the Company in Order No. 2003-295 to place into effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the Commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceeding twelve month period. Specifically, we agreed with and adopted the Company's position as proposed by Company witness John

Hendrix, who recommended that the fuel component remain at 1.678 cents per KWH for the period of May 2003 through April 2004. Order No. 2003-295 at 5 and 10. This Commission, therefore, carried out its statutory duty. We held, however, that the issue of over- and/or under-recovery in this case shall be examined again in light of the final Court decision on the Consumer Advocate's appeal of SCE&G's 2002 fuel case decision by this Commission, and any adjustments may be made accordingly. Order No. 2003-295 at 11. We discern no error.

Finally, with regard to the SCE&G Petition, as alternative relief, the Company requests that this Commission issue an order stating that the Company shall be permitted to record wheeling and other prudently incurred charges not recovered pursuant to the fuel clause in a deferred account to be recovered in a future rate-making proceeding. We deny the request for alternative relief. At this point, we would state that there is a controversy created by the Company as to how certain costs related to this case, such as wheeling, should be recovered, i.e. through the fuel clause or in a ratemaking proceeding. The Company's Petition is contradictory in this regard. On page 2, item b of the Petition, the Company finds fault with the Commission for "failing to find and conclude that wheeling costs should be recovered under the definition of "fuel costs related to purchased power."" We have already addressed this issue supra. However, with regard to the "alternative relief" requested, the Company seems to say that the Commission may allow the recording of wheeling charges by the Company in a deferred account to be recovered in a future rate-making proceeding. This request for "alternative relief" points out the fact that it is unsettled as to how "wheeling" charges, for example, should be

recovered. The request for alternative relief is inconsistent with the Company's initial allegations of Commission error over the Commission's refusal to allow the recovery of wheeling charges through the fuel clause. Accordingly, we cannot grant the requested alternative relief until this issue is settled.

SCE&G's Petition is denied and dismissed.

THE CONSUMER ADVOCATE'S PETITION

First, the Consumer Advocate states that Order 2003-295 approved a fuel factor which allows the Company to conditionally recover all of its purchased power costs through the fuel clause. This includes power purchases both where the breakdown of fuel vs. non-fuel costs is known and where it is not known. The Consumer Advocate alleges that such fuel cost recovery is in violation of S.C. Code Ann. Section 58-27-865 because it allows non-fuel costs to be recovered through the fuel cost. This Commission holds that this allegation of error is without merit. The holding in Order No. 2003-295 is identical to the contents of Stipulations voluntarily entered into by the Consumer Advocate this year in the Progress Energy and Duke Energy fuel cases (Docket Nos. 2003-1-E and 2003-3-E, respectively). We noted in Order No. 2003-295 that the "avoided cost" proxy for purchase power is on appeal to the Courts of this State, and that the Consumer Advocate and the Company disagree as to whether S.C. Code Ann. Section 58-27-865 allows an electric utility to recover as a fuel cost through the electric utility's fuel cost factor the electric utility's entire purchased power costs incurred during the period under review, provided such purchase power costs are less than the fuel costs the electric utility avoids by making such purchase, or whether the utility may only recover the fuel costs or

estimated fuel costs associated with such purchases. We also noted that the Staff and Company disagree on whether fuel costs shown on interchange purchase power invoices should be used to ascertain actual fuel costs. We held in Order No. 2003-295 that the Court's guidance on these issues would be useful on the proper application of the law in the present case. Accordingly, we did not address the purchase power issues described. We held that over- and/or under-recovery will be adjusted in the next fuel case after the final court decision is rendered on this issue, if said decision is applicable to the present proceeding, and adjustment is appropriate. Therefore, this Commission has also allowed for adjustment for over- and/or under-recovery on a going forward basis if appropriate after the decision is issued in the Court case. Thus, no error has been committed in the present case, and the Consumer Advocate's allegation of error is without merit.

Second, the Consumer Advocate takes issue with our holding in Order No. 2003-295 which denied his motion to disallow all purchased power costs in this proceeding. We found in our Order that the Company clearly met its burden of establishing that it employed purchased power during the review period. Order No. 2003-295 at 9. As was stated in that Order, the question that remains is the application of the "avoided cost" proxy as to what cost should be allowable for the purchased power. The Order further held that under the Commission's holding, the Courts will rule on the law in the already existing appeal of the 2002 SCE&G fuel case, and, if appropriate, such a ruling would be applied to the over- and/or under-recovery in the present case. If the Court affirms the Commission's holding in the 2002 case as regards the "avoided cost" proxy, the applicability of the concept to the present case will be clear, and all of the Company's

purchased power costs up to the Company's avoided cost will be allowable. If the Court rejects the Commission's holding, then it is likely that the Commission will be given the opportunity to formulate a new methodology wherein the fuel costs of purchased power will be recoverable through the fuel clause, and adjustments will be made on a prospective basis.

Although the Company did in fact submit its purchased power information in a manner consistent with past fuel clause cases, it remains to be seen whether such submissions comport with the fuel clause statute, S.C. Code Ann. Section 58-27-865. Therefore, the motion to disallow all purchased power costs in this proceeding was properly denied. The issue before the Courts, and, ultimately before this Commission will be how to properly define "fuel costs related to purchased power" in a manner consistent with the statute. There is no question that the Company provided the purchased power information; the question before this Commission is what portion of the purchased power costs should the Company be allowed to recover through the fuel clause. Therefore, the Consumer Advocate's motion was properly denied, and the allegation of error is without merit.

Finally, the Consumer Advocate takes issue with the provisions of Order No. 2003-295 that found that the aim of S.C. Code Ann. Section 58-27-865(F) is to "encourage" electric utilities to operate their production systems, including the purchased power option, in the most effective and efficient manner. Order No. 2003-295 at 8. The Consumer Advocate alleges that this finding is an incorrect statement of that provision,

which, according to the Consumer Advocate, "requires" utilities to operate in the most efficient manner. Again, we disagree with the Consumer Advocate.

As was stated in Order No. 2003-295 at 8, Section F spells out the rebuttable presumption of prudence in operation by a utility of its nuclear generation facilities with the attaining of a certain level of production during the review period. The section does indeed "encourage" operation of the production systems, including the purchased power option, in the most effective and efficient manner, in that, under Section F, costs can be disallowed if the Commission makes certain findings. The section states, in part: "The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs,".....giving due regard to certain factors. This language certainly encourages operation in the most effective and efficient manner, since it penalizes any operation that does not meet this standard.

Further under Section F, if the net capacity factor of a utility's nuclear generation facilities is below 92.5%, after reflecting certain specified outage time, then "the utility shall have the burden of demonstrating the reasonableness of its nuclear operations during the period under review." If the utility achieved a net capacity factor of 92.5% or higher during the review period, then there is a rebuttable presumption that the utility made every reasonable effort to minimize cost associated with the operation of its nuclear generating facility or system. S.C. Code Ann. Section 58-27-865(F). In our opinion, this "rebuttable presumption" methodology certainly encourages operation of production systems in the most efficient manner. If the net capacity factor is below 92.5%, then the

Company must demonstrate the reasonableness of its operations. If that factor is 92.5% or greater, then there is the rebuttable presumption established that a company made every effort to minimize cost. Again, we believe that these provisions encourage the companies to operate their production systems in the most efficient manner. Certainly, if they do not, then they must demonstrate the reasonableness of their nuclear operations during the review period. The Consumer Advocate's last allegation of error is therefore without merit.

Accordingly, the Petition of the Consumer Advocate is denied and dismissed.

CONCLUSION

Because of our reasoning as stated above, both Petitions are denied and dismissed. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn
Chairman

ATTEST:

Gary E. Walsh
Executive Director

(SEAL)